

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2497 of 1999

with

First Appeal No.2498 of 1999

with

Civil Applications Nos.12298/99 and 12299/99

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

GHUMANSINGH NAHARSINGH BHATI

Appearance:

Mr.K.G. Sheth, AGP, for Petitioner

Mr.V.H. Patel, for HL PATEL ADVOCATES for

Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE C.K.BUCH

Date of decision: 28/03/2000

COMMON ORAL JUDGEMENT (Per: M.H. Kadri, J.)

1. State of Gujarat, by filing these two appeals under Section 54 of the Land Acquisition Act, 1894 ('Act' for short), read with Section 96 of the Code of Civil Procedure, 1908, has challenged common judgment and award dated October 31, 1998, rendered by the learned Assistant Judge, Sabarkantha, Himatnagar, in Land Reference Cases Nos.738 of 1988 and 739 of 1988. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common order.

2. Lands of claimants-respondents situated in village Lank, Taluka Khedbrahma, District Sabarkantha, came to be acquired for public purpose of Dharoi Jalahar Project, by issuance of notification under Section 4(1) of the Act, which was published in the Government Gazette on July 29, 1971. After following usual procedure, declaration under Section 6 of the Act was made. Notices under Section 9(3)(4) of the Act were served on the respondents. The Land Acquisition Officer, on the basis of material placed before him, made his award on February 18, 1975 and offered compensation to the claimants for the acquired lands of village Lank, at the rate of Rs.3300 per Acre for the Jirayat land and Rs.4300 per Acre for the irrigated lands. The claimants were of the opinion that the compensation offered by the Special Land Acquisition was inadequate. Therefore, they submitted applications in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the matters to the Court for determination of appropriate compensation. Accordingly, references were made to the District Court, Sabarkantha, at Himatnagar, which were numbered as Land Reference Cases Nos. 738 of 1988 and 739 of 1988.

3. The appellants, in response to the notice issued by the Reference Court, filed their written statement, inter alia, contending that reference applications were barred by period of limitation and the claimants were estopped from filing applications for enhancement of compensation as there was consent award. It is further averred that just and adequate compensation was offered by the Land Acquisition Officer taking into consideration situation and fertility of acquired land and, therefore, the applications be dismissed. The Reference Court raised issues at Exh.51. In order to substantiate the claim advanced in the reference applications, the claimants examined Ghumansinh Naharsinh Bhati (claimant

of Land Reference Case No.739 of 1988) at Exh.52. He deposed that market value of acquired land was at the rate of Rs.30,000 per hectare. That, village Lank was surrounded by villages Chapalpur, Marwada and Kotda. That, agriculturists were raising crops of maize, eranda (castor-oil seeds), ground-nut and cotton. The witness further asserted that acquired lands were having facility of irrigation. The witness, in cross examination, denied that he had given consent for drawing consent award. He denied that reference applications were filed on January 27, 1983. The claimants produced previous award of the Reference Court rendered in Land Acquisition Cases Nos.825 of 1988 to 834 of 1988 with respect to acquired lands of village Dhebri, Taluka Khedbrahma, which were acquired for the same public purpose, namely, Dharoi Jalahar Project, by issuance of notification dated July 29, 1971. The Reference Court, in the previous award Exh.62, had determined market value of acquired lands of village Dhebri as on July 29, 1971, at the rate of Rs.225/- per Are for the irrigated lands and Rs.195 per Are for the non-irrigated lands.

4. After considering the evidence led by the parties, the Reference Court, for determination of market value of acquired lands of village Lank, mainly relied upon previous award of the Reference Court (Exh.62) in respect of lands of village Dhebri. Previous award indicated that lands of village Dhebri were acquired by issuance of notification under Section 4(1) of the Act on the same day, i.e. July 29, 1971, on which date present lands were also acquired. The Reference Court held that previous award of the Reference Court rendered in respect of lands of village Dhebri was comparable as well as relevant for the purpose of determining market value of the lands acquired in the present case. The Reference Court observed that village Lank and village Dhebri were situated adjoining to each other and lands of both the villages were having same fertility. The Reference Court rejected contention raised by the appellants that the reference applications were time-barred and the claimants were estopped from challenging award of the Land Acquisition Officer being consent award. The Reference Court observed that, in absence of any evidence produced by the appellants with regard to applications of the claimants being time barred and there being consent award, the reference applications filed by the claimants were maintainable. In the ultimate analysis, the Reference Court held that the claimants are entitled to compensation at the rate of Rs.225 per Are for the irrigated lands and Rs.195 per Are for non-irrigated lands by the impugned common award giving rise to these

appeals.

5. Mr. K.G. Sheth, learned Assistant Government Pleader, submitted that applications filed by the claimants under Section 18 of the Act were clearly time-barred. It is further submitted that the award of the Land Acquisition Officer was declared on February 18, 1975, whereas applications for making references were filed in the year 1986. Learned counsel for the appellant further submitted that the Land Acquisition Officer had passed consent award under Section 11(2) of the Act and, therefore, no application for enhanced compensation was maintainable. Learned counsel for the appellant further submitted that previous award Exh.62 is neither comparable nor relevant and, therefore, the same should not have been made basis for the purpose of determining market value of the lands acquired in the present case. It was claimed that no cogent evidence was led by the claimants to establish that they were entitled to compensation at the rate of Rs.225 per Are for the irrigated lands and Rs.195 per Are for non-irrigated lands and, therefore, the impugned award should be set aside.

6. The submission of learned counsel for the appellants that applications for reference were time-barred is devoid of any merit. We have gone through entire record and proceedings of the case and we are satisfied that the claimants had filed reference applications on February 18, 1975. Admittedly, the award was declared on February 12, 1975 by the Land Acquisition Officer. Some other claimants had filed reference applications before the District Court in respect of their acquired lands in the year 1983 which were rejected as time-barred. The claimants' witness, Ghumansinh Naharsinh Bhati, Exh.52, admitted in his evidence that he had signed joint applications for references which were rejected by the Reference Court in the year 1986. It may be that claimant, Ghumansinh Naharsinh Bhati, might have signed common reference applications which were made in the year 1983. But, the record produced in this case indicates that the present claimants had filed applications for reference on February 18, 1975, i.e. within period of limitation prescribed under the Act. No contrary evidence was produced by the appellant to justify their contention that the reference applications were time-barred. The Reference Court has committed no error in holding that, in absence of any evidence produced by the appellants, it was not possible to hold that the reference applications were time-barred. We

confirm the finding of the Reference Court that reference applications were not time-barred.

7. The contention of learned counsel for the appellants that, as there was consent award under Section 11(2) of the Act, applications for reference were not maintainable, deserves to be rejected. The appellants before the Reference Court had not produced any evidence in support of their contention that applications for reference were not maintainable as there was consent award. No consent agreements were produced before the Reference Court. No witness was examined to prove that there was consent award between the acquiring body and the claimants. The Reference Court was justified in holding that, in absence of any evidence with regard to consent award, it cannot be held that the present applications were not maintainable. The contention of learned counsel for the appellants that the reference applications were not maintainable in view of the consent award also deserves to be rejected. It is settled legal principle, as propounded by the Supreme Court, that one of the methods for the purpose of ascertaining market value of acquired lands is to rely upon previous award of the Reference Court in respect of similar lands of the same village or nearby village and which has become final between the parties. (See: AIR 1993 Supreme Court 225, in the case of Pal Singh vs. Union Territory of Chandigarh.) The previous award Exh.62 was in respect of acquired land of village Dhebri, which was admittedly adjoining to present acquired land of village Lank. Fertility and situation of both acquired lands were similar, and crop pattern of both the villages was also same. Notifications of both acquired lands were also issued on the same day, and the purpose for which lands were acquired was also the same, namely Dharoi Jalagar Project. In our opinion, the Reference Court had not committed any error in placing reliance on previous award Exh.62 for the purpose of determining market value of present acquired lands of village Lank. It is not brought to the notice of this Court that previous award Exh.62 was challenged in the higher forum. It was never brought to the notice of the Court that the lands acquired in the present case have certain disadvantages in comparison to the agricultural lands of village Dhebri which were acquired under Section 4(1) notification of same date. Under the circumstances, we are of the opinion that the Reference Court was justified in placing reliance on the previous award of the Reference Court rendered in respect of agricultural lands of village Dhebri for the purpose of determining market value of the lands acquired in the present case. The ultimate

decision of the Reference Court that the market value of the lands acquired in the present case should be assessed at the rate of Rs.225 per Are for the irrigated lands and Rs.195 per Are for non-irrigated lands, as on July 20, 1971, cannot be said to be erroneous at all. The Reference Court has correctly appreciated the evidence of the case and applied principles which have been enunciated by the Supreme Court from time to time to the facts of the case. Determination of market value cannot be regarded as excessive at all. We confirm the determination of market value of acquired lands of village Lank by the Reference Court as on July 20, 1971 at the rate of Rs.225 per Are for the irrigated lands and Rs.195 per Are for non-irrigated lands.

8. Learned counsel for the Government has, incidentally, submitted that the Reference Court had erred in awarding uniform rate of compensation for kharabha lands. In our opinion, this submission of learned Government Counsel deserves to be rejected. It was not brought on record of the case that kharabha lands were not cultivable. Merely because some land is used for tethering cattle or for storing agricultural implements or for threshing purpose, it cannot be said that the said lands are kharabha lands. In absence of any evidence produced by the appellants that said kharabha lands were uncultivable, the Reference Court was justified in awarding uniform compensation with regard to kharabha lands. Under the circumstances, we are of the opinion that no ground is made out by learned counsel for the appellants to interfere with the impugned award in these appeals. The appeals, therefore, cannot be allowed and are liable to be dismissed. These were the only contentions raised by learned counsel for the appellants, and we do not find merit in any of them.

9. For the foregoing reasons, both the appeals fail and are dismissed with no order as to costs. We confirm determination of market value of acquired lands of village Lank by the Reference Court as on July 20, 1971 at the rate of Rs.225 per Are for the irrigated lands and Rs.195 per Are for non-irrigated lands. The claimants would be entitled to solatium at the rate of 30% and interest as per the amended provision of Section 28 of the Act. However, it is made clear that the claimants shall not be entitled to interest on the amount of solatium.

10. Civil Applications Nos.12298/99 and 12299/99 for stay filed by the appellant would not survive and are

rejected.

(swamy)